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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,447	10/17/2003	Cory O. Nykoluk	26/1145US(0.1)	1563

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3781

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,447

Applicant(s)

NYKOLUK ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-52 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 30-52 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the tangent point in claims 36 and 51 along with the handle being co-linear to the center axis in claim 37, the two stems in claim 42 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 48-52 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6651791. The claims of '791 teach all claimed limitations with respect to the handle structure. With respect to the tangent point, it is noted that the curved handle in claims 1-16 would inherently has a tangent point to the center of the arms.

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3. Claims 30-41, 43-45, and 47 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6651791 in view of either Bieber (5645146) or King et al. (4759431)... Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of U.S. Patent No. 6651791 set forth a baggage, a handle having a hand grip with the pivot axis as claimed. It would have been obvious to one of ordinary skill in the art to provide the handle flush with the baggage as taught by Bieber or King to keep the handle from protruding

Regarding claim 39, note the T-shape handle in claim 8 inherently has a stem.

4. Claims 39-41 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6651791 in view of Liang '080. To the degree it is argued that 6651791 does not teach a stem. It would have been obvious to one of ordinary skill in the art to provide a stem as taught by Liang to provide the desired shape of the handle.

5. Claims 36, 37, 39-46, and 51 and are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 36, and 37, the original does not teach the pivot axis being tangent to the center axis of the arm portion and being co-linear to the distal end of the arm portion. See the 2nd paragraph rejection below. This is a new matter rejection.

Regarding claims 39-42, and 43-46 the original does not teach the handle comprises “at least one stem”. This is a new matter rejection, see 112, 2nd paragraph rejection.

Regarding claim 42, the original does not teach the handle comprises two stems.

6. Claims 30-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 30 and 48, the claims recite the handle being connected to the distal end in a pivoting manner without set forth the structure necessary to enable such functionality. “steps” is misspelled.

Claims 36 and 37 are confusing. Claim 36 recites the arm portion being tangent to the center-axis. Then claim 37 recites the arm portion being tangent to the center-axis. This is confusing because the embodiment only discloses one type of handle. It is either the arm portion being tangent to the center-axis or the arm portion being co-linear to the center-axis. Applicant is to explain how this is possible.

Claim 39 recites “at least one stem” referring that the handle can be function with two stems. However, the disclosure only shows the functionality with only one stem.

Regarding claim 42, “steps” is misspelled.

Claims 42, 46 are confusing. It is unclear what comprises the two stems as claimed. The examiner can not identify the two stem, one extending from one end of the handgrip to the distal end of the arm portion and the other stem extending from the other end of the handgrip to the distal end of the arm portion.

7. Claims 30-32, 34, 35, 37-39, 47, and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Sadow (5564538). Sadow teaches a hand-towed piece of baggage having a set of wheels, a receptacle providing a opening in the top of baggage (note the top recess), a retractable arm 20 and a rotatable towing handle as claimed. The claim does not impart any structure over the structure of Sadow at all.

Regarding claim 31 the arm portion of Sadow is curved as claimed, i.e., it is circumferentially rounded.

8. Claims 30, 31, 34, 35, 37, 38-41, 43-45, 47, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadow in view of Liang (5464080). Regarding claim 30, To the degree it is argued that Sadow does not teach the handle beign pivot relative to the distal end. It would have been obvious to one of ordinary skill in the art to provide a handle pivotable with respect to the distal end as taught by Liang to provide an alternative handle.

Regarding claim 41, note that there is at least one curved portion from the end of the handle to the end of the arm. To the degree it is argued otherwise, It would have been obvious to one of ordinary skill in the art to provide such a curve potion extending to the distal end of the arm to provide the desired shape for the handle.

9. Claims 32, 33, 48, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadow rejection as set forth in paragraphs 4 and 5, and further in view of Browning. It would have been obvious to one of ordinary skill in the art to provide a non-circular cross section as taught by Browning, see figure 15 to provide the desired cross section for the handle.

10. Claim 30, 31, 34, 35, 37, 43, 44, 45, 47, 52, are rejected under 35 U.S.C. 102 (b) as being anticipated by Williams et al. (4538709). Williams teaches a baggage having a set of

wheel a receptable, retractable arms a towing handle having a handle grip 20 in such a manner that the hand grip can pivot relative to the distal end.

Regarding claim 31, note that the arm portion has curvature such that the arm portion curve along the length, i.e., the entire arm portion is curved with respect to the cross section being rounded.

Note that the handle can be position at a flushed position with the wall having the zipper 44 in in Fig. 2.

11. Claims 30-35, 37-41, 43-45, 48, and 50-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen (6434790). Chen teaches a baggage with rotatable handle as claimed.

12. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Mao). It would have been obvious to one of ordinary skill in the art to provide the pivot axis being tangent to the center axis to enable one to carry on the shoulder comfortably.

13. Claims 47, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of either Bieber (5645146) or King et al. (4759431). It would have been obvious to one of ordinary skill in the art to provide the handle flush with the baggage as taught by Bieber or King to keep the handle from protruding.

14. Claims 30, 32, 43, 44, and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Cassimarly et al. (4273222), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Cassimarly in view of Pond et al. (5385220). Cassimally teaches a handle towed piece of baggage having a retractable arm portion 36, a towing handle such that hand grip can pivot relative to the distal end of the arm portion about a pivot axis at 37 so that the pivot axis intersects the hand grip at portions 38. Portion 30 is the stem as claimed.

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To the degree it is argued that the recess on the top of Cassimarly are not the opening as claimed, it would have been obvious to one of ordinary skill in the art to provide the opening as taught by Pond, see opening at 80 in Fig. 13 to provide an alternative type of opening for the handle.

15. The allowance of claims 42, and 46 cannot be determined.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai
Primary Examiner
Art Unit 3727

